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# ALABAMA'S REPEAT OFFENDER LAW: AN EXPENSIVE FAILURE

Alabama's "three strikes" law, the Habitual Felony Offender Act (HFOA), affects about 6,000 people who are serving enhanced sentences based on prior offenses committed years ago, often as teenagers. This law means close to 500 Alabamians are sentenced to die in prison for non-homicide crimes — including people convicted of drug and property offenses only — and cases where there was no physical injury. Alabama is a clear outlier among states with repeat offender statutes: this law permits a Life Without Parole sentence for a single Class A felony if someone has priors for minor drug or property offenses.

Incarcerated people over the age of 50, well past the age most people commit crimes, represent nearly 30% of Alabama's HFOA population. <sup>1</sup>An aging prison population means medical costs have risen from \$60 million to \$144 per year in 15 years. It is fiscally irresponsible for the state to force taxpayers to foot the bill for these thousands of people who have aged out of criminal behavior.

Already, Alabama's overcrowded, understaffed, and violent prisons have been declared unconstitutional by the United States Department of Justice. In response, Gov. Kay Ivey has proposed a private prison building plan at a cost of \$2.6 billion for new buildings alone. HFOA is a major contributor to this crisis. It creates a waste of scarce resources with no public safety benefit and should be repealed or reformed.

## HFOA CASE STUDIES

**Willie Simmons** was sentenced to Life Without Parole after stealing a wallet that contained \$9. He took the wallet by force, wrestling a man to the ground. Authorities charged him with first-degree robbery, and after a 25-minute trial he was sentenced to die in prison based on the fact he had prior convictions for property crimes. Mr. Simmons was 25 at the time and struggling with drug addiction. Today he is 62. Despite being surrounded by violence and drug use at Holman prison, he got sober 18 years ago and is studying for his GED. Over the years, he's filed appeal after appeal, with no lawyer. All were denied. "In a place like this, it can feel like you're standing all alone," he said. "I ain't got nobody on the outside to call and talk to. Sometimes I feel like I'm lost in outer space."

**Alvin Kennard** was released from Donaldson prison in August 2019, after serving 36 years for a \$50 robbery at a Bessemer bakery. Originally, he'd been sentenced to mandatory Life Without Parole for the crime based on three minor property offenses at age 18. These days, Mr. Kennard is employed fulltime at an automotive dealership restoring car bodies. But Mr. Kennard could easily have been left to die in prison. It was only after a judge noticed the usually harsh sentence for a non-homicide crime, looked into Mr. Kennard's situation and learned he was living in Donaldson's honor dorm with a record of exemplary behavior going back 14 years that Mr. Kennard was given this second chance. At 59, he lives a simple life with family in Bessemer, working in an auto body shop, attending church, and sharing his faith in God with everyone he can.

**Ronald McKeithen** has served 36 years for a 1983 robbery of a convenience store when he was 22 in which no one was physically injured. Mr. McKeithen, now 57, lives in the Honor Dorm at Donaldson Prison and has not received a disciplinary in over a decade. Beginning at 18, he was convicted of three non-violent felonies, two of which are now considered Class D felonies and could not be used to enhance a sentence under HFOA. He was sentenced to Life without

<sup>1</sup> According to the ADOC 2012 Annual Report In a 2006 Southern Legislative Conference study, Alabama was 2nd of sixteen states in elderly prisoner growth over the previous decade. Over the last 40 years Alabama's prison system has experienced a 3,188% growth in incarcerated people aged 50-year old or older—comparably the general population grew 748% over the same period. Consequently, the major impact from the growth of the 50+ prison population is the cost of on-going health care, <http://www.doc.state.al.us/docs/AnnualRpts/2012AnnualReport.pdf>

Parole, which was mandatory, after turning down a plea offer for 15 years. While incarcerated, Mr. McKeithen has earned his GED, two certificates in trade school and has completed dozens of classes, self-help programs, and art courses, even though he has no legal avenue for release. The victim in Mr. McKeithen's robbery, Mr. Farooq Janjua, was astonished to learn that McKeithen is still incarcerated. "That was a long time ago," he said. "It looks like that's not fair."

## **HFOA FACTS**

- African Americans are disproportionately harmed by HFOA. 75% of people sentenced to Life Without Parole for robbery are Black.
- Trafficking in marijuana – a legal substance in 11 states – requires a sentence of Life or Life Without Parole for someone with 3 prior felonies, even if all priors were minor property crimes such as receiving stolen property.
- 3,602 people over the age of 40 are serving enhanced sentences under the HFOA, including 525 people who are 60 or older.
- It costs \$22,000 per year to incarcerate someone, and twice that for people over 50, money that could be invested in mental health care, education, and law enforcement.
- Since HFOA was amended in 2000, at least 169 people have been sentenced to Life without Parole under the law, even though other options exist for prosecutors and judges. Many are receiving the sentence upon conviction at trial after first turning down a plea offer for a lesser sentence.
- Geographic disparities abound. For example, Houston County sentences people to Life without Parole under HFOA at 4 times the rate of Alabama's largest county.

## **HFOA SOLUTIONS**

### **This session, the Legislature should:**

- Repeal Alabama's Habitual Felony Offender Law, Alabama Code § 13A-5-9, and replace it with the legislatively approved Sentencing Guidelines, which already require judges to count prior offenses in sentence length calculations.

### **Short of full repeal:**

- Remove the possibility of Life Without Parole sentencing enhancement thereby limiting Life Without Parole to capital murder cases;
- Remove the possibility of Life sentence on third felony conviction;
- Make these changes retroactive and set up a process for efficient review of claims, including appointment of a panel of retired judges;
- Create "reset" period, limiting eligible conviction to those within 5 years or 10 years.
- Limit "strike" list of serious felonies only: Class A and B felonies, thereby curbing Life and Life Without Parole sentences for minor drug and property crimes.